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EX PARTE OR LATE FILED

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June 20, 2012

Ex Parte

FILED/ACCEPTED

VIA ECFS AND HAND DELIVERY

JUN 20 2012

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Federal Communications Commission
Office of the Secretary**

Re: ***Application of Cellco Partnership d/b/a Verizon Wireless and
SpectrumCo, LLC for Consent to Assign Licenses; Application of Cellco
Partnership d/b/a Verizon Wireless and Cox TMI Wireless, LLC for
Consent to Assign Licenses, WT Docket No. 12-4***

Dear Ms. Dortch:

Cellco Partnership d/b/a Verizon Wireless herewith submits the attached *ex parte* letter. The letter contains Highly Confidential Information subject to the Second Protective Order (DA 12-51) in the above-referenced proceeding.

Pursuant to the terms of the Second Protective Order, two copies of the Redacted version of the attached letter are being filed with the Office of the Secretary. The Redacted version of the letter is also being filed electronically through the Commission's Electronic Comment Filing System. In addition, one copy of the Highly Confidential version of the letter is being delivered to the Office of the Secretary and two copies are being delivered to Sandra Danner of the Wireless Telecommunications Bureau's Broadband Division.

Should any questions arise concerning this filing, please do not hesitate to contact the undersigned.

Sandra Danner
WT Docket No. 12-4
DA 12-51

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Sincerely,

/s/
Adam D. Krinsky

Attorney for Verizon Wireless

cc: Jim Bird
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Dear Ms. Dortch:

In response to Verizon Wireless' extensive showing that the AWS spectrum from SpectrumCo and Cox is needed to provide high-quality 4G wireless broadband service, Free Press has asserted that it would be a "good thing" if the company's customers experienced service quality degradation due to increased congestion because that might cause Verizon Wireless to lose customers to other wireless providers.¹ Free Press' goal of creating "disaffected Verizon customers"² by preventing unused spectrum from being put to use to serve those customers is not only extraordinarily bad public policy, but, of course, is not the standard the Commission applies to the review of proposed license assignments.

In its most recent *ex partes*, Free Press has switched gears and now claims that Verizon Wireless does not need additional spectrum in the first place, referencing internal documents it either misconstrues or mischaracterizes.³ Verizon Wireless previously demonstrated that this

¹ Free Press, Reply to Opposition, WT Docket No. 12-4, at 19 (Mar. 26, 2012).

² *Id.*

³ See Letter from S. Derek Turner, Free Press, to Marlene H. Dortch, FCC, WT Docket No. 12-4 (June 4, 2012) ("Free Press June 4th *Ex Parte*"); Letter from S. Derek Turner, Free Press, to Marlene H. Dortch, FCC, WT Docket No. 12-4 (Apr. 26, 2012). A June 14, 2012 *ex parte* submitted by Free Press, along with Consumers Union, New

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claim is incorrect,⁴ and it corrects the record yet again here. While long on hyperbole, Free Press' claims are belied by the extensive record evidence demonstrating Verizon Wireless' spectrum needs throughout the country. Verizon Wireless' detailed fact-based showing—developed through experience with actual 4G customer data traffic derived on a cell sector-by-sector basis, and reflecting the extraordinary consumer demand for 4G that Cisco and others have documented⁵—clearly demonstrates that these license assignments will benefit consumers and are in the public interest.

Before turning to the specifics of Free Press' most recent filing, three overriding flaws with its arguments should be quickly noted:

- First, Free Press continues to ignore the scope of the Commission's statutory authority by arguing that it would be preferable for other competitors to obtain the SpectrumCo and Cox spectrum. The law expressly precludes consideration of any such alternatives,⁶ and Free Press' claims in that respect must be rejected.
- Second, Free Press continues its effort to conflate the AT&T/T-Mobile proposed merger with these transactions. But AT&T/T-Mobile involved the elimination of a nationwide competitor and the assignment of customers—neither of which is present here. That transaction is simply not germane to these spectrum-only transactions.

America Foundation, and Public Knowledge, offers no new arguments regarding the spectrum assignments and merely repeats the claims in the Free Press June 4th *Ex Parte*. See Letter from Parul Desai, Consumers Union; Derek Turner, Free Press; Michael Calabrese, New America Foundation; and Harold Feld, Public Knowledge, to Marlene H. Dortch, FCC, WT Docket No. 12-4 (June 14, 2012).

⁴ See Letter from Adam D. Krinsky, Attorney for Verizon Wireless, to Marlene H. Dortch, FCC, WT Docket No. 12-4 (May 29, 2012) ("Verizon Wireless May 29th *Ex Parte*").

⁵ See, e.g., CISCO, CISCO VISUAL NETWORKING INDEX: GLOBAL MOBILE DATA TRAFFIC FORECAST UPDATE, 2011-2016 (Feb. 14, 2012) (estimating that 4G traffic will grow from six percent to 36 percent of global mobile data from 2011 to 2016), http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white_paper_c11-520862.pdf; CTIA-THE WIRELESS ASSOCIATION, SEMI-ANNUAL WIRELESS INDUSTRY SURVEY (Apr. 13, 2012) (noting that the annual U.S. wireless data traffic grew 123 percent from 2010 to 2011).

⁶ See 47 U.S.C. § 310(d); *Citadel Communications Co., Ltd. and Act III Broad. of Buffalo, Inc.*, 5 FCC Rcd 3842, 3844 ¶ 16 (1990) ("Section 310(d) of the Act limits our consideration to the buyer proposed in an assignment application, and we cannot consider whether some other proposal might comparatively better serve the public interest."). This principle bars the Commission from conjuring up an alternative universe in which the transferee has been remade in Free Press' image of what a wireless service company should be, and evaluating the transaction on that basis.

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- Third, Free Press continues to use this proceeding as a platform to criticize the Commission's spectrum policies. This *ex parte* continues Free Press' earlier plea for the Commission to correct what it has caustically branded the Commission's "pattern of poor public service" and "long legacy of failing to adequately [sic] encourage and promote competition within and between the wireless and wireline markets."⁷ But this proceeding is not the place to change longstanding policies or to debate Free Press' broader regulatory agenda; as the Commission has established, such policy changes are "best left to broader industry-wide proceedings."⁸

Instead, the only relevant inquiry here is whether these transactions are in the public interest. The record here unequivocally demonstrates that they are.

Verizon Wireless Has Made An Exhaustive Showing that Its Customers Need Additional Spectrum to Meet Their Rapidly Growing Needs.

Free Press attempts to distract attention from the voluminous objective, technical evidence demonstrating Verizon Wireless' need for spectrum. And for good reason. That evidence overwhelmingly demonstrates that the proposed license assignments are in the public interest.

For example, Verizon Wireless has described in detail the processes it uses to assess its 4G LTE network capacity constraints and resulting spectrum needs, including the spectrum planning tool known as the Verizon Planning Instrument ("VPI").⁹ As noted previously, the VPI

⁷ See Free Press, Petition to Deny, WT Docket No. 12-4, at 52 (Feb. 21, 2012).

⁸ *General Motors Corp. and Hughes Electronics Corp.*, 19 FCC Rcd 473, 534 ¶ 131 (2004); see also *AT&T Inc. and Qualcomm Incorporated*, 26 FCC Rcd 17589, 17622 ¶ 79 (2011) ("*AT&T-Qualcomm Order*") (noting that the Commission "will not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction").

⁹ See Declaration of William H. Stone, Executive Director of Network Strategy for Verizon, at 9-13, attached as Exhibit 3 to Application of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC for Consent to Assign Licenses, WT Docket No. 12-4, File No. 0004993617 (Dec. 16, 2011) ("Stone Decl."); Supplemental Declaration of William H. Stone, Executive Director of Network Strategy for Verizon, at 10-15, 19-25, attached as Exhibit 2 to Joint Opposition to Petitions to Deny and Comments, WT Docket No. 12-4 (Mar. 2, 2012) ("Stone Suppl. Decl."); Letter from John T. Scott, III, Verizon Wireless, to Marlene H. Dortch, FCC, WT Docket No. 12-4, at 2 (Apr. 30, 2012) ("Verizon Wireless April 30th *Ex Parte*").

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is a network planning tool used in the ordinary course of business to enable Verizon Wireless to assess capacity constraints; it is not a theoretical model devised for regulatory purposes.¹⁰

Applying the VPI, Verizon Wireless has shown that it will face spectrum shortages as soon as 2013 in many markets, with more shortages by 2015 and beyond, absent new spectrum resources. And the company's more recent May projections using LTE data through April 2012 forecast even greater capacity constraints across its LTE network, making the need for additional AWS spectrum even more urgent.¹¹ This is true both in the western United States, where Verizon Wireless holds no AWS spectrum, *and* in the eastern portion of the country, where it holds some AWS licenses; and it is true notwithstanding the substantial investment in network enhancements the company expects to undertake going forward.¹²

Free Press simply ignores all this evidence. Instead, it conjures a spectrum narrative using snippets from barely twenty of the thousands of documents Verizon Wireless has submitted into the record.¹³ In response to Free Press' previous *ex parte*, Verizon Wireless disposed of claims related to nearly half of these twenty documents, detailing how they in no way undercut the benefits that these transactions will bring to consumers.¹⁴ And as discussed below, arguments related to the remaining documents are similarly erroneous or irrelevant.

The documents cited by Free Press in fact underscore Verizon Wireless' experience in operating the first nationwide 4G network and its growing understanding of the future demands

¹⁰ See Verizon Wireless April 30th *Ex Parte* at 2. [BEGIN HIGHLY CONFIDENTIAL]

[END
HIGHLY CONFIDENTIAL] See Free Press June 4 *Ex Parte* at 8 n.17, citing VZW-TPK-FCC-000327. In any event, the company developed the VPI several years ago to project capacity needs for its 1xRTT voice and later its EVDO broadband networks, and more recently adapted the VPI to optimize network planning for the LTE network. See Verizon Wireless April 30th *Ex Parte* at 2.

¹¹ See Letter from Tamara Preiss, Verizon, to Marlene H. Dortch, FCC, WT Docket No. 12-4, at 2, Att. 1 at 5, 7-18, Att. 2 at 6-8 (May 31, 2012) ("Verizon Wireless May 31st *Ex Parte*"); Letter from Tamara Preiss, Verizon, to Marlene H. Dortch, FCC, WT Docket No. 12-4, at 2, Att. 1 at 5, 7-18, Att. 2 at 6-8 (Jun. 1, 2012) ("Verizon Wireless June 1st *Ex Parte*").

¹² See Letter from John T. Scott, III, Verizon Wireless, to Marlene H. Dortch, FCC, WT Docket No. 12-4, at 4-5 (May 8, 2012); Stone Suppl. Decl. ¶¶ 39-49.

¹³ See Free Press June 4th *Ex Parte* at 6-13.

¹⁴ See Verizon Wireless May 29th *Ex Parte* at 3 (addressing VZW-TPK-FCC-0030745), 3-4 (addressing VZW-TPK-FCC-043684, VZW-TPK-FCC-043685, VZW-TPK-FCC-043687, VZW-TPK-FCC-026340), 4 (addressing VZW-TPK-FCC-000327, VZW-TPK-FCC-043702), 7 (addressing VZW-TPK-FCC-0029322).

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expected to be placed on the network over the next several years. While Free Press cites documents from early- to mid-2011 to assert that the company needs no additional spectrum (especially in the east),¹⁵ it misses a critical point: Verizon Wireless did not deploy the first LTE markets until December 2010, and the first LTE smartphone was not launched until March 2011. Until sufficient LTE data became available to discern trends, LTE traffic growth projections did not rely on sufficient LTE traffic information and therefore were less reliable. In fact, recent data show little correlation between EVDO and LTE traffic growth.

The company regularly updates projections in the normal course of business and did so in September 2011 using a reliable amount of LTE data. While earlier LTE traffic projections were based on historical experience with EVDO, actual LTE traffic volumes have [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL] As Verizon Wireless has previously shown at length, the projections based on historical LTE traffic data demonstrate the need for additional spectrum throughout the country. Moreover, Verizon Wireless' latest projections show an even greater need for the spectrum at issue here.¹⁷ Free Press offhandedly suggests that Verizon Wireless' spectrum needs could be met in part if it "move[d] up its refarming plan,"¹⁸ but Verizon Wireless has already exhaustively explained why refarming cannot begin before [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL], as the document cited by Free Press states.

¹⁵ Free Press June 4th *Ex Parte* at 8-11, citing VZW-TPK-FCC-0005624 (Jan. 2011); VZW-TPK-FCC-0013485 (Mar. 2011); VZW-TPK-FCC-0136185 (Apr. 2011); VZW-TPK-FCC-0005050 (Jun. 2011); VZW-TPK-FCC-1045389 (Aug. 2011).

¹⁶ See Verizon Wireless May 31st *Ex Parte*, Att. 1 at 3; Verizon Wireless June 1st *Ex Parte*, Att. 1 at 3. Free Press misconstrues the relevance of information to assert that [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL] Free Press June 4 *Ex Parte* at 7 & n.16. In fact, Verizon Wireless' network planning documents used in the ordinary course of business reflect just the opposite: [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

¹⁷ See *supra* note 11.

¹⁸ Free Press June 4th *Ex Parte* at 10 (emphasis omitted).

¹⁹ Compare Letter from Tamara Preiss, Verizon, to Marlene H. Dortch, FCC, WT Docket No. 12-4, at 2-4 (May 31, 2012) ("Verizon Wireless May 31st Refarming *Ex Parte*"); Letter from Tamara Preiss, Verizon, to Marlene H. Dortch, FCC, WT Docket No. 12-4, at 4-5 (May 17, 2012) with VZW-TPK-FCC-0013485, slide 2 note ([BEGIN

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Free Press cites to various documents that it claims show that [BEGIN HIGHLY
CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

Yet some of these very documents make the point that [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

Other cited documents invoked by Free Press to show [BEGIN HIGHLY
CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]
are readily addressed. For example, Free Press misconstrues [BEGIN HIGHLY
CONFIDENTIAL]

HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]).

²⁰ See Free Press June 4th *Ex Parte* at 8-9 & n.19, citing VZW-TPK-FCC-1045389, slide 10; see also *id.* at 7 n.15, citing VZW-TPK-FCC-046387, VZW-TPK-FCC-0167960, VZW-TPK-FCC-007780.

²¹ See VZW-TPK-FCC-1045389, slide 10.

²² See Free Press June 4th *Ex Parte* at 6-7 n.15, citing VZW-TPK-FCC-043684, VZW-TPK-FCC-043685, VZW-TPK-FCC-043687, VZW-TPK-FCC-026340.

²³ See Verizon Wireless May 29th *Ex Parte* at 3-4.

²⁴ See Free Press June 4th *Ex Parte* at 7 n.15.

²⁵ See VZW-TPK-FCC-046387.

²⁶ See “Data/Voice/SMS Traffic Projection,” at 4 (Sept. 23, 2011) (VZW-TPK-FCC-045462 to 045471); Verizon Wireless May 31st *Ex Parte*, Att. 2 at 6.

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[END HIGHLY
CONFIDENTIAL]

Free Press misconstrues two other documents that it claims show [BEGIN HIGHLY
CONFIDENTIAL]

[END HIGHLY
CONFIDENTIAL] And both documents confirm the larger point that data usage on Verizon
Wireless' network continues to grow substantially and consistently year after year.

Ultimately, nothing in Free Press' claims challenges (let alone rebuts) the detailed data
Verizon Wireless has placed in the record using updated LTE network traffic data that present a
more accurate assessment of the extent of spectrum constraints and potential customer impact.²⁹
As explained in another document cited by Free Press, [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL] The
bottom line is that by year-end 2015, Verizon Wireless' LTE data traffic is projected to be five
times the peak data traffic ever carried on its 3G EVDO network.³¹

Free Press also cites documents that highlight [BEGIN HIGHLY CONFIDENTIAL]

²⁷ See VZW-TPK-FCC-0167960.

²⁸ VZW-TPK-FCC-007780, slide 4.

²⁹ See, e.g., Verizon Wireless May 31st *Ex Parte*, Att. 1 at 5 & Att. 2.

³⁰ See VZW-TPK-FCC-0005624, notes to slide 34.

³¹ See, e.g., Stone Suppl. Decl. ¶ 9. While Free Press attempts to draw a connection between the fact that total busy
hour traffic will increase by a factor of [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY
CONFIDENTIAL] on the LTE network while per bit costs are [BEGIN HIGHLY CONFIDENTIAL]
[END HIGHLY CONFIDENTIAL] than per bit costs on the 3G network, there is no correlation between the
two data points. See Free Press June 4th *Ex Parte* at 6. Per bit costs are not directly connected to capacity or
spectrum constraints.

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[END HIGHLY
CONFIDENTIAL] This is not correct; acute resource needs in one area do not mean that
resources are not needed in another. The company holds AWS F Block spectrum in the eastern
U.S. but no AWS spectrum in western markets; hence, [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

Free Press is also wrong to assert that [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY
CONFIDENTIAL]

Free Press' reliance on documents drafted and communications made during early stages
of discussing the instant transactions in no way undermines the extensive record evidence
demonstrating Verizon Wireless' spectrum needs. [BEGIN HIGHLY CONFIDENTIAL]

³² See Free Press June 4th *Ex Parte* at 9-13, citing VZW-TPK-FCC-0005624, VZW-TPK-FCC-0136185, VZW-TPKFCC-0005050, VZW-TPK-FCC-1045389, VZW-TPK-FCC-0034471, VZW-TPK-FCC-0924402.

³³ See VZW-TPK-FCC-0029322, slide 18; VZW-TPK-FCC-0034471, slide 2 note.

³⁴ See VZW-TPK-FCC-0038284, slide 1.

³⁵ Free Press June 4th *Ex Parte* at 10, citing VZW-TPK-FCC-0175227.

³⁶ VZW-TPK-FCC-0175227, slide 5.

³⁷ Free Press misconstrues [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

³⁸ Free Press June 4th *Ex Parte* at 11 & n.27, citing VZW-TPK-FCC-0013485, slide 6 note.

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[END HIGHLY

CONFIDENTIAL]

Free Press erroneously interprets a statement that [BEGIN HIGHLY
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[END HIGHLY

CONFIDENTIAL] Verizon Wireless, however, has documented and explained the unique reasons that the Lower 700 A and B blocks are not a good complement to its existing LTE network,⁴³ as well as the complications of deploying service on some of the Lower 700 A block licenses.⁴⁴ Given these challenges, Free Press' statement [BEGIN HIGHLY
CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL] is belied by the facts already documented by Verizon Wireless.⁴⁵ Indeed, it is because of these challenges that, consistent with its previous efforts to rationalize its spectrum holdings, Verizon Wireless announced plans

³⁹ Free Press June 4th *Ex Parte* at 11-13, citing VZW-TPK-FCC-0034471 (Feb. 2011), VZW-TPK-FCC-0924402 (Mar. 2011), VZW-TPK-FCC-0136185 (Apr. 2011), VZW-TPK-FCC-0924430 (Apr. 2011).

⁴⁰ *See id.*; VZW-TPK-FCC-0908959.

⁴¹ VZW-TPK-FCC-0034471, at 2.

⁴² *See* Free Press June 4th *Ex Parte* at 11 & n.26, citing VZW-TPK-FCC-0029322, slide 31.

⁴³ Stone Suppl. Decl. ¶ 49; Letter from Kathleen M. Grillo, Verizon, to Rick Kaplan, FCC, WT Docket No. 12-4 (May 22, 2012) ("Lower 700 MHz Response"); Verizon Wireless May 29th *Ex Parte* at 7-8. In particular, use of the Lower 700 MHz band on the Verizon Wireless LTE network would require an additional duplexer in each device because of the spectral distance between the Upper and Lower 700 MHz bands, and this is particularly challenging because it is more complex to add an additional duplexer that operates below 1 GHz. These device design issues are not faced by other Lower 700 A and B licensees or potential licensees that do not hold 700 MHz Upper C block spectrum. Lower 700 MHz Response at 3.

⁴⁴ Lower 700 MHz Response at 3.

⁴⁵ *See* Free Press June 4th *Ex Parte* at 13. The document Free Press cites recognizes [BEGIN HIGHLY
CONFIDENTIAL]

[END HIGHLY

CONFIDENTIAL]

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to conduct a public sale process for its Lower 700 MHz A and B block spectrum to make that spectrum available to another provider better able to use it.

Finally, Free Press' citation to [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL] In fact, Verizon Wireless plans to deploy AWS spectrum beginning next year and trials of AWS service are already underway in [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL].

Verizon Wireless Already Provides Its Customers with the Choice of Using Wi-Fi and Employs Wi-Fi Itself Where It Is Efficient to Do So; Free Press' Claims to the Contrary Are Unavailing.

Free Press wrongly asserts that Verizon Wireless is hostile to Wi-Fi offloading and that “from a customer perspective, Wi-Fi offloading is almost always preferable.”⁴⁷ At bottom, Free Press seems to argue that Verizon Wireless should force its customers onto Wi-Fi networks⁴⁸ instead of giving customers the ability to choose for themselves even as the company continues to invest in LTE deployment on licensed spectrum. Free Press' attempts to substitute its own preference for those of customers should be rejected.

The record here demonstrates that Verizon Wireless has supported and will continue to support Wi-Fi in two complementary ways. First, all of the devices it offers include Wi-Fi capability, and all customers are free to choose to offload their traffic onto available Wi-Fi networks if they so desire.⁴⁹ The documents cited by Free Press even describe a number of Verizon Wireless' ongoing Wi-Fi initiatives, including [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL] Second, Verizon Wireless itself deploys Wi-Fi technology in circumstances where demand is particularly high and concentrated, such as in stadiums and similar venues.

⁴⁶ See Free Press June 4th *Ex Parte* at 10 & n.24, citing VZW-TPK-FCC-0030745, VZW-TPK-FCC-0013485.

⁴⁷ Free Press June 4th *Ex Parte* at 18.

⁴⁸ *Id.* at 14.

⁴⁹ Many of the devices offered by Verizon Wireless notify the customer of Wi-Fi availability when they detect it.

⁵⁰ See VZW-TPK-FCC-033057.

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More broadly, Free Press' efforts to substitute its preference for those of Verizon Wireless' customers and to second guess Verizon Wireless' business judgment have no place in this proceeding. In a number of contexts, the Commission steadfastly has chosen "not to oversee an industrial policy" because it is "reluctant to second-guess an applicant's business judgment."⁵¹ Furthermore, the Commission has consistently given carriers the flexibility to make their own technology choices,⁵² and repeatedly and successfully allowed the market to assess various approaches and investment strategies.

Ultimately, other wireless providers may choose a different path with respect to both Wi-Fi offloading and a host of other network investment approaches, just as they may offer different levels of service, pricing, and data usage plans than Verizon Wireless. In fact it is the essence of competition that different network technologies and strategies can be employed by different competitors, with consumers choosing what works best for them. The FCC should encourage this outcome of diverse choices for consumers and not, as Free Press would have it, mandate that all providers make the same investment and technology choices or use a license assignment proceeding to announce technology regulations based on no formal record.⁵³

⁵¹ *Victory Media, Inc.*, 3 FCC Rcd 2073, 2075 ¶ 19 (1988); see also *Vonage Holdings Corp.*, 19 FCC Rcd 22404, 22423 ¶ 29 n.108 (2004) ("[T]his Commission prefers that economic and market considerations drive the development of technology, rather than regulatory requirements."); *Promotion of Competitive Networks in Local Telecommunications Markets*, 14 FCC Rcd 12673, 12686 ¶¶ 24-25 (1999) (explaining that "[i]n order for competitive facilities-based networks to develop and flourish," providers "must be free to provide services in the manner that will enable them most efficiently to offer the services, or combinations of services, that consumers desire").

⁵² See generally *Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless*, 26 FCC Rcd 9664, 9733-9734 ¶¶ 106-07 (2011) ("The Commission has largely adopted flexible licensing policies that do not mandate any particular technology or network standard for commercial mobile wireless licensees.... Competition among mobile wireless providers using incompatible wireless network technologies has other advantages that can benefit consumers, including increased product variety and differentiation of services, more technological competition, and tougher price competition."); see also *Introduction of New Advanced Wireless Services*, 16 FCC Rcd 596, 606 ¶ 21 (2001) ("The Commission traditionally has taken a flexible approach to standards and generally does not mandate a particular type of technology, leaving such an outcome to the marketplace.").

⁵³ The courts also have endorsed this view. See, e.g., *Nextel West Corp. v. Unity Township*, 282 F.3d 257, 267 n.13 (3d Cir. 2002) ("The [1996 Act] clearly does not force competing wireless providers to adopt identical technology or design nor does it compel them to fit their networks of antennae into a uniform, rigid honeycomb of interlocking cells.").

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Verizon Wireless Has Demonstrated That the Proposed License Assignments Will Not Result In Undue Concentration and Free Press' Contrary Claims Lack Merit.

In its most recent filing, Free Press makes the hyperbolic claim that Verizon Wireless is seeking a “regulatory handout” that will increase its concentration of mobile broadband spectrum at the expense of competition.⁵⁴ That is nonsense. Obtaining a required regulatory approval for arms-length secondary market transactions in which Verizon Wireless will pay nearly \$4 billion to purchase unused spectrum so it can put that spectrum to use for the benefit of consumers is anything but a “handout.” Rather, it would achieve the Commission’s secondary market goals to “permit spectrum to flow more freely among users and uses in response to economic demand” and to facilitate “the availability of unused and underutilized spectrum to those who would use it for providing service.”⁵⁵

Moreover, Free Press’ concentration analysis bears no resemblance to the standards employed by the Commission or to generally accepted competition law precedent. As the Commission explained in its recent *AT&T/Qualcomm Order*, in spectrum-only transactions where the number of competitors is not changing and customers are not being acquired, the Commission “considers only the competitive effects associated with the increases in spectrum that would be held by [the assignee] post-transaction.”⁵⁶ Since 2004, it has done so by employing a spectrum screen to identify markets of concern.⁵⁷ In this case, Verizon Wireless will remain at or below the screen post-transaction in more than 98 percent of the counties where it is acquiring the spectrum (that small number would drop with the sale of the company’s Lower 700 MHz spectrum holdings pending approval of these transactions). And even in the 1.8% of counties (46 of 2,577 counties) where the screen would be exceeded, Free Press produces no evidence of competitive harm. Of course, even these numbers overstate the amount of spectrum that Verizon Wireless ultimately will hold in many of the markets at issue here. As the Commission is aware, Verizon Wireless has initiated a public sales process to sell its lower 700 MHz A and B block licenses if the license assignments at issue in this proceeding are approved, which will reduce its spectrum holdings in the markets at issue here in which it holds the A and B block licenses.

⁵⁴ Free Press June 4th *Ex Parte* at 4-6.

⁵⁵ *Principles for Promoting the Efficient Use of Spectrum by Encouraging the Development of Secondary Markets*, 15 FCC Rcd 24178, 24178 ¶ 1, 24185-86 ¶ 18 (2000).

⁵⁶ *AT&T-Qualcomm Order*, 26 FCC Rcd at 17601 ¶ 29.

⁵⁷ *AT&T Wireless Services, Inc. and Cingular Wireless Corp.*, 19 FCC Rcd 21522, 21568-69 ¶ 109 (2004); *AT&T-Qualcomm Order*, 26 FCC Rcd at 17602 ¶ 31.

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Instead of confronting these inconvenient facts, Free Press simply disregards the screen in favor of a different measure more to its liking that focuses on nationwide POPs coverage. Even in a nationwide MHz*POPs review, however, Free Press skews the numbers. In reality, Verizon Wireless would hold only about 26 percent of the spectrum that the FCC includes in its spectrum screen (and less following the public sale process for the 700 MHz spectrum holdings that the company will sell if these transactions are approved)—meaning that roughly three-quarters of that spectrum remains available for others. But Free Press confines its analysis to the 700 MHz, cellular, PCS, and AWS bands, and disregards, among other things, the 160 MHz of BRS/EBS spectrum Clearwire is using to provide broadband service, and the 40 MHz of MSS spectrum held by DISH for which the Commission may soon provide flexibility for full terrestrial broadband use.

Finally, Free Press' claim that Verizon Wireless holds more spectrum "free-and-clear to support LTE" than any of its competitors⁵⁸ is equally off base. As Verizon Wireless noted in response to a recent T-Mobile presentation, such claims are meaningless, because they exclude bands where other providers have active plans to roll out LTE services, ignore the number of connections Verizon Wireless serves, and ignore the company's announced plan to sell its Lower 700 MHz A and B block licenses.⁵⁹

* * *

This letter is being filed pursuant to Section 1.1206 of the Commission's Rules. Should you have any questions, please contact the undersigned.

Sincerely,

/s/
Adam D. Krinsky
Attorney for Verizon Wireless

cc: Jim Bird (redacted)
Jessica Campbell (redacted)
Ty Bream (redacted)

⁵⁸ See Free Press June 4th *Ex Parte* at 1 n.2.

⁵⁹ See Letter from John T. Scott, III, Verizon, to Marlene H. Dortch, FCC, WT Docket No. 12-4, at 2 & n.7 (May 21, 2012).

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